

EXHIBIT 5

Second Deposition of Hal J. Singer Excerpts

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

- - -

CUNG LE, NATHAN QUARRY, JON: CIVIL ACTION
FITCH, BRANDON VERA, LUIS :
JAVIER VAZQUEZ, and KYLE :
KLINGSBURY on behalf of :
themselves an others :
Similarly situated, :
Plaintiffs : CASE NO.
: 2:15-cv-01045-RFB
vs. : (PAL)
:
ZUFFA, LLC d/b/a ULTIMATE :
FIGHTING CHAMPIONSHIP and :
UFC, :
Defendants :

- - -

Tuesday, January 23, 2018
DAY 2

- - -

Continuation of videotaped
deposition of HAL J. SINGER, Ph.D., taken
pursuant to notice, was held at the
offices of BERGER & MONTAGUE, P.C., 1622
Locust Street, Philadelphia, PA 19103,
commencing at 10:19 a.m., on the above
date, before Lori A. Zabielski, a
Registered Professional Reporter and
Notary Public in and for the Commonwealth
of Pennsylvania.

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co-promotion works in that sport.

I think that when I -- in this section that you are asking about, I think that I largely contained the evidence to evidence inside of the MMA. But I think that it -- a reasonable proxy for contracting in the but-for world could be, for example, to look at boxing. That's certainly reasonable.

BY MR. ISAACSON:

Q. Okay. So other than boxing or other MMA promoters, are there any other sports firms that you consider similar to the plausible but-for world that you describe in paragraph 198 of your report? And, again, I am not asking you if there are other firms that you can draw lessons from. You have quite clearly said you can draw lessons from other firms.

MR. CRAMER: Objection to form.

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THE WITNESS: I think what I am trying to do here -- and you can try again if -- if we are

talking past each other. But I am trying to inform what I think the contracting, what Zuffa's contracting would look like in a but-for world. And so there was a reason why I limited my -- my analyses, at least in that section, to other MMA promoters.

But I think at this time, I don't want to start offering new opinions, but I will say that I think you could -- you could go to boxing as an example and it's conceivable you could go into other sports, but I just haven't -- I haven't really thought a lot about doing that, so I don't feel comfortable offering a new opinion right now.

BY MR. ISAACSON:

Q. All right. The -- in your

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opening report, would you agree with me you described a but-for world where there would be more fighter mobility and which Zuffa's foreclosure share was either zero, 20 percent or 30 percent, depending upon the model that you were looking at?

A. I think those were salient characteristics of the but-for world as described in my -- in my initial report.

Q. All right. So the plausible but-for world that you describe in your rebuttal report, is that -- is that a but-for world where the foreclosure share is zero, 20 percent or 30 percent?

A. Oh, it's certainly consistent with foreclosure shares that are -- that are in that range, yes.

Q. All right. Is the plausible but-for world that you describe in paragraph 198 as a result of any specific foreclosure share, zero, 20, 30?

A. I don't think that it's associated with a specific share 27.5, no. I think that it's trying to capture

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what the contracting most likely would look like in a world absent the challenged conduct.

Q. All right. And are you -- is it still the case in your rebuttal report that you are projecting impacting damages in a world in which the foreclosure share is zero, 20 or 30 percent?

A. I think there might be some confusion between impact and damages and anticompetitive effects. Remember, I don't -- I can describe impact and anticompetitive effects without regard to a specific foreclosure share number. In contrast, when I am trying to estimate aggregate damages, for example, if I am going to use my model, I have to -- I have to specify a precise foreclosure level. And so I am concerned by hearing the question that there might be some conflation between what I need to assume for the purposes of impact and, say, anticompetitive effects, on the one hand,

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1 understand if that means it gets you
2 there.

3 Does it get you to 30
4 percent or lower?

5 A. Well, I don't think it works
6 that way. I don't think that you -- I
7 think that you might have -- I think that
8 the origins of what the section is doing
9 might be confused. I don't -- I don't
10 need something to get me there. I think
11 that there is a criticism by Dr. Topel
12 that I needed to specify in more concrete
13 terms what I think certain aspects of the
14 but-for world would look like, including
15 the contracting practices. And so this
16 section lays out what I think some
17 plausible contracting practices would
18 look like using Dr. Topel's own
19 methodology or insight that we should
20 look to MMA rivals with less market power
21 as a proxy.

22 Q. In your opinion, would the
23 plausible but-for world that you describe
24 in paragraph 198 result in a foreclosure

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1 share of 30 percent or lower?

2 MR. CRAMER: Asked and
3 answered.

4 THE WITNESS: Yeah, I just
5 can't -- I can't make sense -- I
6 am sorry. I just can't make sense
7 of the question. It doesn't -- it
8 doesn't work that way.

9 BY MR. ISAACSON:

10 Q. So you don't -- when you say
11 "it doesn't work that way," would you
12 explain what you mean?

13 A. Sure. To step back, you
14 probably recall that when estimating a
15 wage effect here, I had to simulate a
16 world in which the foreclosure share was
17 at a level that would be deemed
18 pro-competitor or at least not
19 anticompetitive by an antitrust court.
20 And so that caused me to run simulations
21 at zero and 20 and 30 percent foreclosure
22 shares, and I was able to estimate a wage
23 effect based on my model.

24 The criticism that came back

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1 from Dr. Topel was that he wanted more
2 granularity on what that but-for world
3 looked like, and this was -- this section
4 was my response to that -- to that
5 criticism. And that's how the world
6 works.

7 Q. All right. Have you done
8 any analysis that would -- any
9 econometric analysis that would lead to
10 the conclusion that the plausible but-for
11 world that you describe in 198 would lead
12 to a foreclosure share of 30 percent or
13 lower?

14 MR. CRAMER: I think you
15 asked this several times in the
16 last deposition, but I will allow
17 it. Asked and answered.

18 THE WITNESS: If I am -- I
19 just don't --

20 MR. ISAACSON: I couldn't
21 because he didn't have paragraph
22 198 then. But...

23 MR. CRAMER: Well, you asked
24 about econometric analyses

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1 relating to the --

2 MR. ISAACSON: Not
3 paragraph 198.

4 MR. CRAMER: But go ahead.

5 THE WITNESS: Well, let's
6 just be -- I mean, let's be clear
7 that if I am interpreting your
8 question literally -- and maybe
9 you don't mean to use the word
10 "econometric." But econometric
11 means based on statistical
12 methods.

13 MR. ISAACSON: Yes, I do
14 intend to use that.

15 THE WITNESS: But think
16 about what the question said then.
17 Could you use statistical methods
18 to try to project what a contract,
19 you know, would look like when we
20 are talking about things like
21 would a right-to-match clause
22 exist in the but-for world. So, I
23 mean, you know what I did. I
24 looked at -- I looked at what MMA

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1 rivals were saying about the
2 right-to-match clause and with
3 respect to it's only there because
4 we are doing it in response to
5 Zuffa.

6 It's just some things don't
7 lend themselves to econometric
8 analysis. I don't know if you
9 meant economic in the question,
10 but with respect to the question
11 on econometric --

12 MR. ISAACSON: I did not.

13 THE WITNESS: -- I mean,
14 certain things don't lend
15 themselves to statistical methods.
16 And when they don't, I can't use
17 statistics.

18 BY MR. ISAACSON:

19 Q. All right. So just to boil
20 it down, because that was long, it's fair
21 to say you did not use an econometric
22 method to determine whether the plausible
23 but-for world you outline in your report
24 would lead to a 30 percent foreclosure

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1 share lower because econometric methods
2 would not lend themselves to that
3 purpose?

4 A. I think I like the way that
5 I answered it a second ago. We are
6 trying to fill in certain nonquantitative
7 aspects of a contract in a but-for world,
8 such as whether or not it includes a
9 right-to-match provision, such as whether
10 or not it would -- it would allow for
11 co-promotion, such as whether or not it
12 would allow fighters to leave and go
13 fight for a rival promoter. Those
14 aspects, in my opinion, don't lend
15 themselves to econometric analysis.

16 Q. Okay. And that -- all
17 right. And is there some method that you
18 have used, some nonquantitative method
19 you have used to determine that the
20 plausible but-for world you outline in
21 your report, in your rebuttal report,
22 would cause a foreclosure share of 30
23 percent or lower?

24 MR. CRAMER: Asked and

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1 answered in the last deposition.

2 THE WITNESS: I think -- I
3 think -- respectfully, I think you
4 have got the causation running in
5 the wrong direction.

6 BY MR. ISAACSON:

7 Q. I just -- I would ask that

8 --

9 A. Okay. So just the question
10 doesn't make sense to me from an economic
11 perspective. That's just not how --
12 that's not how the model works.

13 Q. Is the model -- and the
14 model does not permit -- with respect to
15 the plausible but-for world that you
16 describe in your rebuttal report, the
17 model does not allow you to determine
18 what would be the foreclosure share that
19 would result in that world; is that
20 correct?

21 MR. CRAMER: Objection to
22 form.

23 THE WITNESS: No, that's not
24 correct.

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1 BY MR. ISAACSON:

2 Q. Okay. And you told me
3 that's not how the model works. My
4 question is, is there some method you
5 have used, some nonquantitative method to
6 determine that the plausible but-for
7 world you outline in your rebuttal report
8 would cause a foreclosure share of 30
9 percent or lower?

10 MR. CRAMER: Asked and
11 answered.

12 THE WITNESS: I had arrived
13 at the zero -- the answer is no.
14 I have arrived -- well, let me
15 just say -- strike that.

16 I have arrived at the zero,
17 20 and 30 percent but-for
18 foreclosure share levels in my
19 prior report before having ever
20 written this. So there is nothing
21 that I -- that I needed in this
22 rebuttal report to simulate those

23 levels. Those levels, as I
24 explained a few minutes ago, are

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1 levels that I thought a Court
2 would deem at least not
3 anticompetitive based on my
4 understanding of precedent in the
5 similar cases.

6 So I think that that's where
7 the zero, 20 and 30 percent come
8 from, let's just be clear. It's
9 not -- it's not from anywhere
10 else. We are trying to find a
11 level of foreclosure that would be
12 deemed not anticompetitive by a
13 Court.

14 So the questions that you
15 asked me in the last five minutes
16 are -- seem like you are looking
17 for an alternative motivation for
18 how I got to zero, 20 and 30
19 percent. I am telling you what
20 got me to the zero, 20 and 30
21 percent, I was trying to come up
22 with levels that would basically
23 give Zuffa -- would shield Zuffa
24 from liability in exclusive

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1 dealing case.

2 BY MR. ISAACSON:

3 Q. All right. So I am not here
4 to discuss your motivations about this.
5 I am just here to ask you questions.

6 And my next question is, is
7 there anything in your rebuttal report
8 where you analyze how a but-for world
9 that you have described would achieve a
10 foreclosure rate of 30 percent or lower?

11 A. I don't think so, but the
12 question, again, has the -- has the
13 causality going in the wrong direction.

14 Q. All right. And when you say
15 the causality is going in the wrong
16 direction, by that I am asking you how
17 the but-for world causes a lower
18 foreclosure share. Are you saying the
19 correct causality is how a lower
20 foreclosure share causes the but-for
21 world?

22 A. It's closer. I would say
23 that if what we are trying to do is to --
24 first, we are trying to figure out what

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1 the wage effect was from Zuffa taking the
2 foreclosure share from the low digits,
3 low single digits up into the -- up into
4 the 90s, say, over the course of the
5 damages period, for the class period.
6 And I say, okay, let's roll it back,
7 let's see what the relationship was
8 between wage share and foreclosure share
9 and then just roll it back to levels that
10 would -- that would give Zuffa -- that
11 would shield Zuffa from antitrust
12 liability. Okay.

13 And then the next question
14 is, okay, what are -- what are other --
15 you know, you had asked me during the
16 first deposition, how does Zuffa get
17 there, what would they have to do to
18 their contracts to come into compliance
19 with or to ensure that foreclosure was no
20 higher than 30 percent. And we went
21 through all sorts of different ways that
22 they could restructure their contracts so
23 that it wouldn't -- so that foreclosure
24 levels wouldn't be above 30 percent.

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1 And Dr. Topel says, I want
2 to know more, not just what they'd have
3 to do to come into compliance, but tell
4 me what other elements would look like,
5 would there be -- would there be
6 co-promotion, would there be the
7 right-to-match clause, would there be
8 this and that and the other.

9 And so in this reply report,
10 I am trying to fill in a little more
11 granularity as to what a plausible
12 but-for world would look like that would
13 be consistent with foreclosure shares of
14 zero, 20 and 30 percent.

15 Q. Now, when you say that the
16 but-for world you describe in paragraph
17 198 is a plausible but-for world, are
18 there other plausible but-for worlds in
19 your opinion that would be consistent
20 with foreclosure shares of 30 percent or
21 lower?

22 A. Sure. Remember, in a
23 footnote I say that while co-promotion
24 would be likely based on these proxies,

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1 it's not -- it's certainly not necessary
2 to engender competitive outcomes so long
3 as the markets are more open, less
4 restrictive and rivals get a foothold and
5 are able to put forward compelling
6 matches for MMA audiences.

7 Q. Are there -- at this point,
8 following your rebuttal report, is it
9 your opinion that there are many ways to
10 get to a lower foreclosure share that
11 would constitute an appropriate but-for
12 world?

13 A. Well, remember, all that
14 needs to happen to get to a lower
15 foreclosure share is that Zuffa would
16 need to change the parameters of its
17 contracts with fighters in such a way as
18 to ensure that the cumulative duration of
19 the restrictions don't take you over some
20 level that a Court would deem
21 exclusionary.

22 That's all you need to get
23 the foreclosure share down. We had
24 talked about whether 30 months -- 36

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1 months was too long and, you know, what
2 would be a -- what would be a duration
3 that would be acceptable to a Court.

4 That, to me, is really the
5 key element of what you need in a
6 contract to bring the foreclosure share
7 down to levels of zero, 20 or 30 percent.
8 After that, what we are doing here is we
9 are just filling in other aspects of the
10 but-for world that would complement or be
11 consistent with that -- with that
12 outcome.

13 Q. All right. So in your
14 opinion, does but-for world have to
15 include contracts that are -- exclusive
16 contracts that are no longer than one
17 year?

18 A. Well, I think we went
19 through this in the first -- in the first
20 deposition. But, again, I mean, my
21 answer is not going to change. It's
22 going to be -- it's going to depend on
23 where -- where the Court would draw the
24 line as to what's considered to be an

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1 exclusionary arrangement.

2 Now, I have tried to inform
3 the Court based on what I think is the
4 average career span of a fighter and
5 that -- and that when we -- when we
6 figure out how to draw that line, we
7 ought to take into consideration how much
8 of a fighter's remaining career span is
9 left after they sign with Zuffa.

10 But depending on where that
11 line gets drawn, Zuffa could then
12 construct its contracts in such a way as
13 to comply with that -- with that line,
14 and with an important caveat: So long as
15 30 percent, say, is tolerated, they
16 could -- they could carve off 30 percent
17 or, in fact, more if the market share is
18 not quite 100 percent. They could carve
19 off a certain portion of their fighters
20 and subject them to potentially longer
21 contracts.

22 So there is not -- there is
23 not a -- there is not one way to get a
24 foreclosure share under 30, as we

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1 discussed. There are a lot of ways to
2 get it down. But these other parameters
3 that I am informing right now are things
4 that help fill in what the but-for world
5 would look like. They are meant to
6 complement or be consistent with. But
7 they're -- I think that while we have
8 been going in circles, these other
9 parameters, while important, aren't the
10 levers that are pushing foreclosure down
11 to 30, 20 or zero percent.

12 Q. Okay. One simple point I
13 had been wondering about based on the
14 support, you had told me before that
15 there is not one way to get foreclosure
16 share under 30; there are a lot of ways
17 to get it down.

18 That's still your opinion?

19 A. Oh, sure. I just gave
20 you -- I just gave you two ways to do it.
21 One could be across the board, every
22 single contract contains the same
23 provision. That would get you down.
24 Another way to do it would be to do a

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1 carve-out for a certain set of contracts,
2 but you would have to make sure that
3 those contracts don't account for too
4 large of a share of a market.

5 There are lots of ways that
6 you could restructure the contract, and I
7 have -- of course, I have opinions as to
8 how it could be done to come into
9 compliance with, say, a 30 percent
10 foreclosure requirement.

11 Q. All right. And at this
12 point, following your rebuttal report,
13 you are still, depending on your analysis
14 about where the Court draws the line as
15 to what's an exclusionary arrangement.

16 Am I correct about that?

17 MR. CRAMER: Objection to
18 form.

19 THE WITNESS: I think that
20 that ultimately would fall to the
21 fact-finder. I have tried to
22 inform the decision-making based
23 on my experience, my reading of
24 other cases, other economic

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1 articles and, of course, most
2 importantly, I go back to this,
3 the average career length of a
4 fighter. I think that all those
5 things should inform what the line
6 should be.

7 I have tried to -- I have
8 tried to offer what I think would
9 be a fair number. I have -- in
10 fact, in this report, I have
11 pointed to the duration in Zuffa's
12 contracts when it had less market
13 power than it does now as what I
14 think would be a reasonable proxy
15 for the duration of the contract.

16 BY MR. ISAACSON:

17 Q. All right. And just to make
18 sure I understand where you are now at
19 the end of your rebuttal report, if the
20 Court were to determine that contracts --
21 exclusive contracts of one year or more
22 were exclusionary, would that -- if --
23 would an appropriate but-for world
24 include one-year contracts or less, plus

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1 some other parameters or some other
2 possible parameters, as Zuffa said, and
3 that would result in a foreclosure share
4 of 30 percent or lower?

5 MR. CRAMER: Objection to
6 form.

7 THE WITNESS: Well, I think
8 we are close. I think what I am
9 getting tripped up on is you said
10 one year or more would be
11 exclusionary. And then, of
12 course, if you did it at one year,
13 you wouldn't be in compliance.
14 But how about can we try a
15 different hypothetical or did
16 you -- maybe you meant to do that.

17 BY MR. ISAACSON:

18 Q. Well, no. I was not trying
19 to put significance of 365 days versus
20 366.

21 But if the Court drew the
22 line at exclusionary contract of
23 something that's more than one year and
24 instead, that a one-year contract or less

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1 was not exclusionary --

2 A. Got it. Got it. Sorry.
3 Then I didn't hear that the first time,
4 but I am with you now.

5 Q. Okay. With that assumption,
6 in your opinion, would an appropriate
7 but-for world be contracts that were one
8 year or less in duration, plus some other
9 potential parameters that you pointed to
10 in your report and that but-for world
11 result in foreclosure shares of 30
12 percent or less?

13 A. Well, it's certainly getting
14 closer to what I think would be the
15 appropriate but-for world. It seems like
16 we could -- we could restructure the
17 contracts by reducing the duration, such
18 that when I went back and calculated
19 foreclosure, it would no longer be in
20 excess of 30 percent, and I think that
21 getting the duration below what the
22 fact-finder deem exclusionary and in
23 violation of the antitrust laws is a
24 smart way to go about it.

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1 Q. And from that -- and from
2 that, your models -- your damages models
3 and your second impact model would
4 estimate -- would estimate damages impact
5 from that but-for world?

6 MR. CRAMER: Objection to
7 form.

8 Go ahead.

9 THE WITNESS: If you give me
10 a but-for foreclosure share, I can
11 tell you what the -- what the --
12 how much wages would go up by.

13 BY MR. ISAACSON:

14 Q. All right. Now, if the
15 Court were to rule that an exclusionary
16 contract is over two years and it's not
17 exclusionary, it's two years or less, if
18 you -- would an appropriate but-for world
19 then be contracts that were two years or
20 less, plus some other parameters, and
21 that would achieve a foreclosure share of
22 30 percent or less?

23 MR. CRAMER: I am going to
24 object to the extent that this

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1 calls for a legal conclusion.

2 But go ahead and answer, if
3 you understand the question.

4 THE WITNESS: Let me -- it
5 was a two-parter and let me take
6 the second part, which is probably
7 easier. And that is, would it --
8 would it get you to a foreclosure
9 share below 30 percent? And I
10 think that by the construction of
11 your hypothetical, it would, if I
12 understood it correctly. You are
13 saying the Court deems anything in
14 excess of 24 months --

15 MR. ISAACSON: Right.

16 THE WITNESS: -- to be
17 exclusionary -- let me finish --
18 and you asked me to posit a world
19 in which the contracts were
20 exactly 24 months.

21 BY MR. ISAACSON:

22 Q. My intent is this question
23 two is the same as the last question. If
24 the Court has ruled that above two years

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1 is exclusionary and in the first
2 question, that they ruled that above one
3 year was exclusionary. Everything else
4 -- everything else is the same.

5 MR. CRAMER: Same objection.
6 BY MR. ISAACSON:

7 Q. You would still -- if Zuffa
8 moved its contracts down to two years or
9 less, that would achieve foreclosure
10 shares of 30 percent or less?

11 A. I think that if we draw the
12 line, if one were to draw the line at 25
13 months and if -- and if all of the
14 contracts came in at 24 months, then it's
15 almost tautological. If that's how we
16 define foreclosure, then the foreclosure
17 would come in at less than 30 percent.

18 Q. And in that situation, you
19 would reach the same conclusion as to the
20 amount of damages and your second impact
21 analysis -- second impact model would
22 remain the same?

23 MR. CRAMER: Objection to
24 form, incomplete hypothetical,

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1 calls for a legal conclusion.

2 THE WITNESS: I want to
3 think about it a little more, but
4 sitting here, it's not -- it's not
5 obvious how I would change my
6 impact model or damages model
7 based on that hypothetical. I
8 probably would want to think about
9 it a little more.

10 But my -- what's giving me
11 some reservation is that -- I
12 wouldn't draw the line at 24. I
13 think the 24 represents too much
14 of a fighter's life span or career
15 span.

16 And so that -- while it
17 would be a significant improvement
18 over where things are today, it's
19 conceivable that a movement
20 from 36, roughly where we are
21 today, to 24, would it engender
22 different competitive effects than
23 a movement from 36 to 12? I mean,
24 certainly at 12, the market is

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1 more open, there is more worker
2 mobility.

3 Whether or not my model can
4 accommodate that distinction, I
5 would want to think about it some
6 more. I just haven't thought
7 about it yet.

8 BY MR. ISAACSON:

9 Q. Looking at paragraph 198,
10 there is a couple things you have listed
11 in your plausible but-for world, the
12 third of which is clauses that allow
13 fighters enhanced mobility.

14 What do you mean by that?

15 A. I guess since I have already
16 listed right-to-match, I would certainly
17 include right-to-match in that. But I am
18 thinking of the other -- the other
19 clauses that are extending the duration
20 or otherwise, tying up or sewing up of
21 fighters with Zuffa.

22 Q. And the various tolling
23 provisions?

24 A. Correct. Tolling or

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1 exclusive -- the exclusive provision. I
2 mean, we could -- we could go through
3 each one, but anything that --

4 Q. I would rather not.

5 A. Okay.

6 MR. CRAMER: Were you done
7 with your answer? Anything that
8 you were about to say.

9 THE WITNESS: Yeah, anything
10 that extends the duration or
11 otherwise lessens mobility.

12 BY MR. ISAACSON:

13 Q. Okay. So but when you are
14 saying a plausible but-for world includes
15 clauses that allow fighters enhanced
16 mobility, what are you referring to?

17 MR. CRAMER: Asked and
18 answered.

19 BY MR. ISAACSON:

20 Q. For example, are you
21 referring to eliminating all of those
22 tolling restrictions that you have
23 pointed to or something less? I am
24 trying to get an idea of what you are --

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1 what you are doing here.

2 MR. CRAMER: Asked and
3 answered.

4 THE WITNESS: I am referring
5 to any of the restrictions. I am
6 not -- I am saying that it would
7 be plausible that most, if not
8 all, of them would go away. It's
9 conceivable that some would stick
10 around. But I think that what I
11 am trying to capture is a world in
12 which -- in which fighters have
13 greater mobility.

14 BY MR. ISAACSON:

15 Q. So when you are referring to
16 clauses that allow fighters enhanced
17 mobility, are you assuming that most or
18 all of the tolling provisions go away?

19 A. If those tolling provisions
20 have the effect of extending the duration
21 of the contracts beyond, say, 12 months,
22 then I think that in a more open and
23 competitive environment, those tolling
24 restrictions would likely go away.

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1 Q. All right. So by clauses
2 that allow fighters enhanced mobility,
3 you are thinking of tolling provisions
4 that have the effect of extending the
5 duration of the contracts beyond 12
6 months?

7 A. Correct.

8 Q. And in your plausible
9 but-for world, all of those tolling
10 provisions would go away, most of them?

11 A. I think I gave you an
12 example where I could conceive of a
13 champion's clause staying around but
14 effectively being negated by virtue of
15 other more mobility. I think the point
16 that I am trying to make here, just so
17 that it's clear if it wasn't, is that I
18 am trying to give some granularity to
19 what Zuffa's most likely or most
20 plausible contract would be in a but-for
21 world, and given the -- given the record
22 evidence, this is the best that I can do
23 at trying to give some granularity to
24 that contract.

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1 Q. Okay. The next thing you
2 say is an easier and more certain route
3 to free-agency.

4 What does that mean beyond
5 what you have already described?

6 A. I think that might just be a
7 restatement of the things that I have
8 described.

9 Q. All right. And then
10 enhanced co-promotion, what do you mean
11 by that?

12 A. So I mean co-promotion in
13 the sense that there would be no
14 restrictions on fighters to participate
15 in an event with a rival MMA promoter.
16 So it's perhaps a broader definition than
17 literally engaging in the -- in the
18 co-promotion. I think that it would make
19 sense in that world for both promoters to
20 engage in promotion, they would have
21 incentives to do so.

22 But the restriction that I
23 am -- that I have in mind is the
24 restriction that would prevent, say, a

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1 Zuffa fighter for participating in an
2 event with a non-Zuffa or Zuffa rival
3 promoter.

4 Q. So you have referred in this
5 to exclusive contracts of one year or
6 less. Well, maybe not.

7 When you said -- when you
8 say "substantially shorter duration
9 fighter contracts of one year or less,"
10 are those exclusive contracts or
11 nonexclusive contracts?

12 A. Well, they are exclusive
13 contracts but with a caveat, which is
14 that if there is an opportunity to
15 participate in an event with a rival
16 promoter, if I have No. 1 and you have
17 No. 2 and there is an opportunity to put
18 on an incredible show, that there
19 wouldn't be impediments, contractual
20 impediments to preventing that from
21 happening.

22 Q. So in your -- in this world,
23 there would be one-year exclusive
24 contracts; however, if there was a

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1 Bellator event that a UFC fighter wanted
2 to fight in, the UFC fighter could go do
3 that even during the one-year period?

4 A. I think that's what I have
5 in mind.

6 Q. And the result of that would
7 be that the UFC and Bellator or other
8 promoters would end up co-promoting
9 events; is that your assumption?

10 A. I think that once you set in
11 motion the event and it -- and it
12 features a Zuffa fighter, that Zuffa
13 would have strong unilateral incentives
14 to want to promote that event, just as
15 they did with the Conor McGregor boxing
16 match.

17 Q. And in your opinion, what
18 would happen to MMA in this world, would
19 most events be co-promoted?

20 A. Well, I don't -- I don't
21 have an opinion as to -- as to whether
22 most would be. I am just suggesting that
23 there would be more -- there would be
24 more co-promotion than what occurs today.

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1 Q. All right. And is it -- am
2 I correct that with regards to each one
3 of these pieces of your but-for world,
4 such as enhanced co-promotion, you don't
5 have an opinion as to how much that piece
6 would reduce foreclosure share?

7 MR. CRAMER: Objection to
8 form.

9 THE WITNESS: I just don't
10 understand the question. I don't
11 think that foreclosure share, as I
12 have constructed it, would be
13 sensitive to the level of
14 co-promotion. I think, again, we
15 might have the causality running
16 in the other way.

17 BY MR. ISAACSON:

18 Q. So in terms -- in terms of
19 your estimates of damages -- various
20 estimates of damages, you are not able to
21 isolate how much of those damages, for
22 example, are due to the lack of the
23 enhanced co-promotion that you describe
24 here?

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1 Without going back over your
2 answers, have your opinions on that
3 changed from the first deposition?

4 MR. CRAMER: Objection to
5 form.

6 You can answer.

7 THE WITNESS: No, my
8 opinions haven't changed on that.

9 BY MR. ISAACSON:

10 Q. Your plausible but-for world
11 in paragraph 198 doesn't mention the
12 ancillary rights provision.

13 Does the ancillary rights
14 provision exist in your but-for world?

15 A. If it's -- if it's part of
16 the challenged conduct -- I am just going
17 to say something that's tautological. If
18 it's part of the challenged conduct, then
19 I think it most appropriately leaves in
20 the but-for world.

21 But I don't think that I --
22 in this section, just by memory, I don't
23 recall finding what a -- sorry -- what a
24 smaller rival does with respect to the

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1 ancillary rights provision or what Zuffa
2 did with respect to ancillary rights
3 provision when it had less market power.

4 So I don't think that in the
5 rebuttal report I gave any kind of
6 specificity or granularity with respect
7 to that provision, and I am reluctant to
8 offer anything new today.

9 Q. All right. This is purely a
10 grammatical question. You said: I think
11 it most appropriately leaves in the
12 but-for world.

13 By that, do you mean that
14 the ancillary rights provision most
15 appropriately is no longer in existence
16 in the but-for world?

17 MR. CRAMER: Misstates the
18 testimony.

19 THE WITNESS: I think if
20 it's part of the challenged
21 conduct and if plaintiffs are
22 including that in the challenged
23 conduct, then we are -- as
24 economists, what we are trying to

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1 do is model a world in which the
2 challenged conduct is absent.

3 BY MR. ISAACSON:

4 Q. And in your but-for world,
5 is Zuffa still able to contract for some
6 identity rights?

7 A. I don't think that there is
8 anything that I have written or read that
9 would suggest that it couldn't contract
10 for identity rights.

11 Q. And in your but-for world,
12 can Zuffa contract for the identity
13 rights of a fighter for one specific bout
14 in perpetuity?

15 A. I don't think that I have
16 offered an opinion with that kind of
17 granularity, and I don't think that I am
18 prepared to say that it couldn't or could
19 in a but-for world, sitting here.

20 Q. All right. Does the but-for
21 world you describe in your rebuttal
22 report include the sponsorship and
23 endorsement clauses?

24 MR. CRAMER: Objection to

1 form.

2 THE WITNESS: There are
3 certain aspects of the sponsorship
4 arrangement, in particular what I
5 have referred to as the
6 sponsorship tax, that I thought
7 were anticompetitive in my report.
8 And so I would be loathed to say
9 that we ought to just look the
10 other way with respect to that
11 one.

12 But at the end of the day, I
13 don't -- I don't think that I am
14 offering a firm opinion as to --
15 as to the nature of those aspects
16 of the agreement.

17 BY MR. ISAACSON:

18 Q. So if hypothetically Zuffa
19 was broadcasting on Fox television and it
20 prohibited a fighter from wearing an ESPN
21 logo on their shorts, you wouldn't have
22 an opinion -- or you wouldn't have an
23 opinion one way or the other as to
24 whether that's in your but-for world; is

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1 that fair?

2 A. I haven't expressed an
3 opinion. It seems to me a restriction of
4 that nature could be consistent with a --
5 with a lower foreclosure share, and so as
6 an economist, remember, I go back -- my
7 model turns on the foreclosure share.
8 And so that's how I would attempt to
9 answer that question in the first
10 instance. And I don't think that I -- my
11 model or anything that I have written or
12 read can inform in any kind of
13 intelligent way an answer to that
14 question.

15 Q. Okay. The -- in looking,
16 again, at the substantially shorter
17 duration fighter contracts of one year or
18 less, does that -- does that put any
19 limit on Zuffa re-signing or extending
20 the contract before the year expires in
21 exchange for paying the fighter more
22 money?

23 A. Well, I think that the
24 plaintiffs are complaining that Zuffa is

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1 strategically using certain provisions of
2 the contract to lock fighters into
3 effectively perpetual extensions when
4 they want them. And given that that is
5 part of the challenged conduct, I
6 would -- I would at least hope that if we
7 were to rewrite these in a way that they
8 were in compliance with the antitrust
9 laws, that that sort of gamesmanship
10 would be -- would be either disallowed or
11 much harder to engage in.

12 Q. Right. But in your opinion,
13 would those rewrite of the contracts
14 prohibit Zuffa from simply offering
15 fighters more money to extend the
16 contract beyond one year?

17 MR. CRAMER: Incomplete
18 hypothetical.

19 THE WITNESS: I don't think
20 that I have an opinion on that.

21 BY MR. ISAACSON:

22 Q. And if Zuffa did
23 successfully extend the contracts beyond
24 one year by simply paying the fighters

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1 more money and did that with the same
2 amount of fighters as today, have two- or
3 three-year contracts, would that be
4 anticompetitive?

5 MR. CRAMER: Incomplete
6 hypothetical, form.

7 THE WITNESS: Well, when you
8 say did it the same as today, I
9 mean --

10 BY MR. ISAACSON:

11 Q. The same amount, same
12 numbers.

13 MR. CRAMER: Objection to
14 form, incomplete hypothetical.

15 THE WITNESS: I think I
16 would need more specificity in the
17 hypothetical. But if Zuffa
18 engaged in some of the same
19 tactics that it did today to
20 secure extension, such as refusing
21 to either give a fighter a fight
22 or giving the fighter an
23 inappropriate match-up as a
24 punishment for not extending, I

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1 think that -- I think that that --
2 that is part of the challenged
3 conduct and I think that those
4 sorts of tactics would be absent
5 in a but-for world.

6 BY MR. ISAACSON:

7 Q. Okay. But all I am focused
8 on is if Zuffa pays more money to extend
9 the contract, not the other -- not the
10 other things you are pointing to.

11 A. I hear you.

12 Q. If Zuffa did that and
13 extended these contracts to the point
14 where they had the same effective
15 duration as the contracts have today,
16 would that have an anticompetitive effect
17 in your view?

18 MR. CRAMER: Objection to
19 form, incomplete hypothetical.

20 THE WITNESS: I mean, the
21 way that I am hearing the question
22 is that if Zuffa were to behave
23 competitively, and that is compete
24 on the merits, and keep fighters

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1 saying is that the but-for wages and wage
2 shares that I am estimating are closer to
3 the fighters' marginal revenue product
4 than what they are currently being paid.

5 Q. But in your opinion, are the
6 but-for wages that you are estimating
7 approximating the marginal revenue
8 product of the fighters?

9 A. I am getting caught up on
10 the word "approximating." Can we -- can
11 we agree on something that's a little
12 less strong? How about we are -- we are
13 getting closer to in the but-for world.
14 The simulation is putting fighters at a
15 wage share and wage level that is closer
16 to their marginal revenue product. I am
17 not -- I am not prepared to say that it
18 would -- it would approximate or be
19 exactly equal to 100 percent of the
20 but-for wages.

21 Q. I need to follow up because
22 getting closer to could mean a little
23 closer to or very closer to. So I could
24 stand in -- at the back of this room and

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1 take one step forward and get closer to
2 you but still be far away.

3 A. That's fair.

4 Q. The -- is the -- are the
5 but-for wages -- but-for wages that you
6 are estimating in your regression, are
7 those close to or -- let me put it this
8 way: The but-for wages that you are
9 estimating in your regression, how close
10 are they to the marginal revenue product
11 of the fighters in your opinion?

12 A. I haven't estimated the
13 marginal revenue products, so to answer
14 that question, I would have to -- I would
15 have to engage in a -- in a different
16 exercise than what I did here.

17 But I -- what I -- what I
18 can tell you is that when we take the
19 foreclosure share down to 30 percent, we
20 are eviscerating a large part of Zuffa's
21 market power. What I am -- what I am
22 hesitant -- what I am hesitating on and
23 what I am reluctant to say is that the 30
24 percent foreclosure completely

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1 eviscerates Zuffa's market power to the
2 point that Zuffa is forced to pay
3 fighters equal to their marginal revenue
4 product. That's -- that's quite a
5 statement.

6 And I want to allow for the
7 possibility that with 30 percent
8 foreclosure share, Zuffa could still have
9 some, not as much, but some buying power,
10 such that it could push wages below
11 marginal revenue product, just not to the
12 extent that it's doing today.

13 Q. Now, you said you haven't
14 estimated the marginal revenue product of
15 the fighters. If you could estimate
16 those, would that -- would you then use
17 that as the dependent -- a dependent
18 variable in your impact regression?

19 A. No. I intentionally did not
20 estimate the marginal revenue product
21 because it would be one unnecessary step
22 in the process, and I didn't want to
23 introduce an unnecessary step. I did
24 what was needed to be done to simulate

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1 but-for wage shares.

2 Q. In your opinion, does the
3 individual marginal revenue product vary
4 among fighters?

5 A. It could as a matter of
6 theory, yes.

7 Q. Beyond theory, based on the
8 investigation that you have done in this
9 case, in your opinion, does it actually
10 vary amongst the fighters?

11 A. Most likely, yes, based on
12 my investigation, I am thinking in
13 particular of a regression in which I
14 estimated the relationship between event
15 revenues and the rank of the highest
16 ranked fighter featured, and it seems to
17 me that so long as rank is capturing
18 productivity, it appears to be that if
19 you put on a fight with a high productive
20 fighter, all things equal, you are going
21 to generate higher event revenue.

22 So that tells me there is
23 going to be variation among the fighters
24 with respect to their ability, basically

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1 their revenue generation capabilities.

2 Q. And assuming the status quo,
3 current Zuffa contracts and practices, is
4 there a relationship in your opinion
5 between fighters' marginal revenue
6 product and their individual
7 compensation?

8 MR. CRAMER: Do you mean in
9 the current world?

10 MR. ISAACSON: Yes.

11 THE WITNESS: Yes, I think
12 in the current world, all things
13 equal, the more productive you
14 are, the higher you get paid.

15 BY MR. ISAACSON:

16 Q. And I think you have said
17 this, but I will just confirm. You do
18 think that what you would describe as a
19 competitive world, there would be a
20 relationship between marginal revenue --
21 individual marginal revenue product and
22 individual compensation?

23 A. Well, there is always a
24 relationship, right? There is a

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1 relationship in the actual world, there
2 is a relationship in the but-for world.
3 That's Labor Theory 101. The -- what we
4 are trying to figure out is how the
5 challenged conduct affected or thwarted
6 that relationship.

7 Q. Okay. And you have said
8 that event revenue is a proxy for the
9 collective marginal revenue product of
10 the fighters of the event.

11 Is there a way of looking at
12 event revenue to use that as proxy for
13 individual fighter marginal revenue
14 product?

15 A. Well, I think, again, the
16 way that I have constructed my impact
17 regressions, I have -- I have used the
18 individual compensation relative to the
19 event revenue as my dependent variable.
20 So in a sense, I am trying to decompose
21 event revenue that way.

22 Q. All right. And when you say
23 you use individual compensation relative
24 to event revenue, as I understand it, you

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1 are looking -- some fighters are paid
2 more, some are paid less, and you are
3 using their payments relative to one
4 another to see -- and comparing that to
5 event revenue?

6 A. I wouldn't -- I wouldn't
7 quite put it that way.

8 Q. Let me try to put it this
9 way: The -- I am trying to get something
10 simple here.

11 A. Okay.

12 Q. You have someone who is
13 being paid a million dollars for a fight
14 and someone who is being paid \$50,000 for
15 a fight.

16 A. Got it.

17 Q. You are assuming that the
18 person being paid \$50,000 is making --
19 has a lower marginal revenue product than
20 the person being paid a million dollars?

21 MR. CRAMER: Objection to
22 form.

23 THE WITNESS: I am not
24 assuming anything. Just to make

Page 438

1 your hypothetical concrete, let's
2 assume they both fought in the
3 same fight.

4 MR. ISAACSON: Same event.

5 THE WITNESS: Okay. You
6 didn't say that, but I am trying
7 to --

8 MR. ISAACSON: Right.

9 THE WITNESS: Right.

10 Let's assume that they both
11 fought in the same event. What my
12 model is trying to do, it's not
13 assuming anything. It's letting
14 the data explain to us the
15 relationship between the fighters'
16 attributes and how much of the
17 event revenue that fighter was
18 able to take home as compensation.

19 BY MR. ISAACSON:

20 Q. All right. But for your
21 dependent variable, the -- you are
22 relying on the -- for your dependent
23 variable, the person earning \$50,000
24 would be making less of a contribution

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1 than the person being paid a million
2 dollars?

3 A. It makes sense as a matter
4 of theory, but I am not assuming
5 anything. I am going to let the data
6 explain to me the relationships,
7 basically explain to me why the person
8 who made a million made a million.

9 Q. But in -- for your -- for
10 your regression in your dependent
11 variable, you are going to input in that
12 example the \$50,000 and the million
13 dollars for the two different fighters?

14 MR. CRAMER: Objection to
15 the form.

16 THE WITNESS: With a slight
17 adjustment. Remember, the
18 left-hand side variable is the
19 ratio of the fighters paid to the
20 event revenue. So with that
21 caveat, yes, those would be -- if
22 you are looking at this as an
23 Excel spreadsheet, those would be
24 two rows in the spreadsheet. But,

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1 of course, you need to populate it
2 with all the other variables in
3 the right-hand side.

4 MR. ISAACSON: All right.
5 BY MR. ISAACSON:

6 Q. And do you believe that the
7 same group of fighters at a Zuffa event,
8 if they went to a Bellator event, would
9 generate the same event revenue?

10 MR. CRAMER: Objection to
11 form.

12 THE WITNESS: To add a
13 little specificity to this
14 question, are we speaking in the
15 actual world or in the but-for
16 world?

17 MR. ISAACSON: Let's do
18 both.

19 THE WITNESS: Okay. Because
20 the answer might -- the answer
21 might depend. That's the only
22 reason why I bring it up.

23 BY MR. ISAACSON:

24 Q. In the actual world, the

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1 present, the current world, if you take
2 the same group of fighters at a Zuffa
3 event and transport them to a Bellator
4 event, same -- everything else equal,
5 same location, same period of time, would
6 you expect that they would generate the
7 same event revenue?

8 MR. CRAMER: Objection to
9 form, incomplete hypothetical.

10 THE WITNESS: So I
11 haven't -- I haven't modeled that
12 particular scenario. I can tell
13 you based on a published article
14 in the literature that I cite and
15 rely on, there is a finding that
16 suggests that the vast majority of
17 event revenues are driven by the
18 identity of the fighters as
19 opposed to the platform.

20 And so to the extent that
21 was your guide, it would suggest
22 to you that the event would, in
23 fact, generate something close to
24 what was generated at Zuffa.

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1 But I -- in thinking about
2 my model and the way it works in
3 the other analyses that I have
4 performed, I don't know if I
5 have -- if I have conducted that
6 particular estimation.

7 BY MR. ISAACSON:

8 Q. So you have said -- you both
9 pointed me to an article and said you
10 don't know if you have conducted that
11 particular estimation. So let me get
12 back over this.

13 Do you have an opinion
14 whether in the actual world, if you take
15 the same group of fighters at a Zuffa
16 event and transport them to a Bellator
17 event that is equal in all other
18 respects, same venue, location,
19 et cetera, that the -- that the Bellator
20 event would generate the same event
21 revenue as the Zuffa event?

22 MR. CRAMER: Asked --

23 BY MR. ISAACSON:

24 Q. Do you have an opinion on

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1 A. I believe so.

2 Q. Okay.

3 MR. ISAACSON: We can mark
4 it as 6, just so you have it handy
5 in case you want it.

6 - - -

7 (Singer-6 marked for
8 identification at this time.)

9 - - -

10 BY MR. ISAACSON:

11 Q. Exhibit-6 is an article by
12 McGowan and Mahon titled Demand For the
13 Ultimate Fighting Championship, an
14 Economic Metric Analysis, a Pay-Per-View
15 Buy Rate.

16 That's the article that you
17 just referred to a little bit before in
18 your testimony?

19 A. Correct.

20 Q. And this is -- you cite this
21 in your rebuttal report to support the
22 conclusion that the fighters are the ones
23 who drive event revenue?

24 A. I also cited it in my

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1 original report, but I think -- I think I
2 cite it in both reports.

3 Q. All right. And did you do
4 anything to replicate, validate or
5 confirm the econometric work that was
6 done in this -- in this article?

7 A. Yes.

8 Q. Okay. What did you do?

9 A. I estimated a related
10 relationship between event revenues and
11 the rank of the highest ranked fighter
12 featured in the event.

13 Q. And I will come back to
14 that. Just in terms of the -- McGowan
15 and Mahon had a data set and performed
16 some regressions.

17 Did you obtain a copy of
18 that data set in an attempt to replicate
19 any of their work?

20 A. I didn't obtain a copy of
21 their data set. However, I have largely
22 the same set of data with respect to
23 pay-per-view sales and event revenues.
24 In fact, I think that one could -- one

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1 could say I even have a better data set
2 than these guys do by virtue of the
3 discovery that's been propounded in this
4 litigation.

5 Q. All right. And the Journal
6 of Business and Economics, are you
7 familiar with that journal?

8 A. Yes.

9 Q. Okay. Who are the editors?

10 A. I don't know the names of
11 the editors.

12 Q. All right. Are you aware of
13 any other studies that agree with this
14 published work?

15 A. Besides my own?

16 Q. Yeah, any other published
17 studies?

18 A. I am not aware of other
19 published studies.

20 Q. All right. Paragraph 94 of
21 your rebuttal report, you describe a 1974
22 article by Scully.

23 A. Would you -- I am sorry.
24 Could I just ask you to give me a second

Page 450

1 to get there?

2 Q. Sure.

3 A. It's 97?

4 Q. Yes.

5 MR. CRAMER: 94 or 97?

6 MR. ISAACSON: Oh, I am
7 sorry.

8 MR. CRAMER: 94 on page 73.

9 THE WITNESS: Okay. I am at
10 94.

11 BY MR. ISAACSON:

12 Q. All right. And you refer to
13 the prestigious American Economic Review?

14 A. Yes.

15 Q. What makes the American
16 Economic Review a prestigious journal?

17 A. I think it's considered
18 among economists to be a top-tiered
19 journal in the profession. Economists
20 have a way of ranking journals. It --
21 one measure is based on number of
22 citations to the journal and that --
23 that's -- if you can get in AER, you are
24 doing pretty well.

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1 Q. What would you consider the
2 other top-tiered journals in your
3 profession alongside the American
4 Economic Review?

5 A. Oh, I think I said that I
6 would put Journal of Economic Literature
7 in there.

8 Are we -- we could go into
9 certain subfields, such as labor journals
10 or sports journals. Everything has
11 become very specialized these days, but
12 that's -- AER is a -- is a general
13 journal that I think stands out among its
14 peers. I would put Econometrica in the
15 same category.

16 Q. Okay. Journal of Economic
17 Literature, American Economic Review,
18 Econometrica.

19 Any others within -- at the
20 top level field of economics?

21 A. I am sure there are others,
22 but those are -- those are the most
23 elite, if you will.

24 Q. Okay. And within you said

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1 the subfield of labor economics, what
2 would you consider the prestigious or
3 top-tiered journals there?

4 MR. CRAMER: Foundation.

5 MR. ISAACSON: What's the
6 basis of that objection?

7 MR. CRAMER: The basis of
8 that objection?

9 MR. ISAACSON: Yes.

10 MR. CRAMER: I don't -- I
11 don't know that he's studied the
12 top-tiered journals in economics.
13 If he has, he can say so.

14 THE WITNESS: I believe
15 there is something titled Journal
16 of Labor Economics. I would -- I
17 would do it the same way. I
18 would -- I could have the name
19 slightly off. It could be Review
20 of Labor Economics. But the
21 important thing is that there
22 are -- there are ways to rank
23 specialty journals, and it's very
24 similar. And so if you wanted to

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1 see what the highest ranked labor
2 journals were, you would -- you
3 could go to various rankings that
4 are on the Internet.

5 BY MR. ISAACSON:

6 Q. And have you done that
7 within the field of labor economics?

8 A. I seem to recall doing that
9 at some point in my life, not as part of
10 preparation for this deposition or this
11 report. But I seem to recall studying
12 the rankings or reading an article about
13 rankings of economic journals somewhere
14 during my career.

15 Q. So at some point during your
16 career, you probably looked at some
17 rankings of the journals of labor
18 economics.

19 But is it fair today you
20 would not be able to identify what were
21 the -- what are the top prestigious
22 journals in the field of labor economics
23 in the way that you did for the field of
24 economics journals that you did

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1 generally?

2 A. I think that I would do it
3 the same way that I did it for the
4 general journals. I think my answer was
5 I would -- I would go to -- I would go to
6 a set of rankings and find it.

7 Q. I am not -- I am not asking
8 you about the method. I understand the
9 method that you would look at but in
10 terms of actually being able to name
11 names.

12 A. Yeah. Well, of course. I
13 mean, I could name names, Review of Labor
14 Statistics, for example. But the
15 question is there is -- the Federal
16 Reserve Bureau puts out I believe
17 specialty journals that are -- that are
18 looking at labor economics, but it's
19 not -- I don't know -- I wouldn't go by
20 my memory or articles that I happened to
21 read. I would -- I would point you to
22 rankings.

23 Q. All right. Today you would
24 not be able to tell me by name the names

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1 of the top-tier labor economics journals?

2 MR. CRAMER: Misstates the
3 testimony.

4 THE WITNESS: Beyond the
5 ones that I just gave you? I
6 don't know if I could -- if I
7 could give you others.

8 BY MR. ISAACSON:

9 Q. Well, which ones have you
10 named by name?

11 A. I think I gave you
12 the Journal of Labor Economics. I think
13 I gave you Review of Labor Statistics, I
14 believe is one. I am going by memory
15 here. I think I have seen some specialty
16 journals as well.

17 I certainly cite articles,
18 but I don't -- I don't -- in various
19 labor journals. But I would refer you to
20 the rankings instead of going by my
21 memory of labor journals.

22 Q. Okay. And you mentioned the
23 subfield of sports. Are there leading
24 journals in that field that you could

Page 456

1 name?

2 A. I don't know if I could name
3 them. I certainly cited articles from
4 them, but I would refer you to the same
5 rankings.

6 THE VIDEOGRAPHER: Excuse
7 me, Counsel. We are approaching
8 ten minutes left on the disc.

9 MR. ISAACSON: Okay.

10 - - -

11 (Off the record at this
12 time.)

13 - - -

14 MR. ISAACSON: Why don't we
15 just change the tape.

16 THE VIDEOGRAPHER: The time
17 is 12:22 p.m. This is the end of
18 Disc 1. We are off the record.

19 - - -

20 (Off the record at this
21 time.)

22 - - -

23 THE VIDEOGRAPHER: The time
24 is 12:31 p.m. This is the start

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1 of Disc 2. We are on the record.

2 BY MR. ISAACSON:

3 Q. You talked before about how
4 individual marginal revenue product
5 varies between fighters, and I think we
6 agree that fighter compensation agrees
7 between various fighters.

8 Does current fighter
9 compensation vary between fighters in the
10 same way that the individual marginal
11 revenue product varies between the
12 fighters?

13 MR. CRAMER: Objection to
14 form.

15 THE WITNESS: You used the
16 word "same" and that's what I am
17 tripping up on. There is
18 certainly a relationship between a
19 fighter's MRP and his or her
20 compensation.

21 BY MR. ISAACSON:

22 Q. Would you describe that
23 relationship as significant, substantial
24 or minimal or --

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1 A. Again, I am going to go back
2 to just basic labor theory, that in a
3 competitive market, the fighter's
4 compensation would be equal to his or her
5 MRP, in a perfectly competitive -- let me
6 stipulate or let me add that caveat. In
7 a monopsonized labor market, there is a
8 wedge between the MRP and the
9 compensation.

10 And there is certainly a
11 relationship under both extremes, of the
12 monopsonized market and the perfectly
13 competitive market. And part of the
14 theory of the case is, as you know, that
15 the conduct here upset that normal
16 transmission mechanism, that is, it upset
17 what would have otherwise -- what gains
18 to fighter productivity that would have
19 otherwise been passed along in the form
20 of higher wages didn't occur, in my view,
21 as they -- as they would have in a world
22 absent the restrictions on fighter
23 mobility.

24 Q. All right. I understand you

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1 impact that used the labor share event
2 revenue as the dependent variable to
3 measure the alleged anticompetitive
4 effect, including the impact and damages,
5 of a monopsony?

6 MR. CRAMER: Objection to
7 form.

8 THE WITNESS: Very close.
9 At the very end of a monopsony, of
10 a monopsonist who engaged in
11 certain challenged conduct.
12 Remember, we are trying to isolate
13 the effect of the challenged
14 conduct. And I think as you put
15 it, it sounded as if we were
16 trying to isolate the effect
17 Zuffa's monopsony.

18 BY MR. ISAACSON:

19 Q. So the regression analysis
20 that you used for damages in one case of
21 impact used the labor share of that
22 revenue as the dependent variable to
23 measure the anticompetitive effect,
24 including the impact or damages, of

Page 480

1 alleged monopsonistic conduct?

2 MR. CRAMER: Objection to
3 form.

4 THE WITNESS: I don't -- I
5 don't like that one as much as the
6 one that I gave you.

7 MR. ISAACSON: I thought
8 that's what you gave me.

9 THE WITNESS: Monopsonistic
10 conduct is fairly broad, and I
11 think that we are looking at a
12 very particular type of conduct.
13 It's the challenged conduct here,
14 the exclusionary conduct. And
15 so --

16 BY MR. ISAACSON:

17 Q. All right. I am just trying
18 to --

19 A. Okay.

20 Q. I equated those things.

21 A. Okay.

22 Q. But I am trying to use your
23 words.

24 A. Okay.

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1 Q. So your regression analyses
2 for damages in one case for impact used
3 the labor share of event revenues as the
4 dependent variable to measure the
5 anticompetitive effect, including the
6 impact and damages, of the conduct that's
7 challenged in this case?

8 A. I think that's fair.

9 Q. Okay. All right. Now, can
10 you point me to any journal that has used
11 a regression analysis using the labor
12 share of revenue -- need not be on an
13 event basis -- the labor share revenue as
14 the dependent variable to measure the
15 anticompetitive effect, impact or damages
16 of any conduct by -- any conduct by a
17 monopsonist?

18 A. As you put it, I think there
19 are several articles in my literature
20 review on the use of labor share to study
21 monopsony in the economics industry and
22 in general, and in sports economics, in
23 particular, that use labor share as the
24 dependent variable in an econometric

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1 analysis.

2 Q. Which ones would you point
3 to as having -- again, focusing on the --
4 on the use as the dependent variable?

5 A. Sure.

6 Q. If it helps you locate
7 things, you start talking about Scully
8 around paragraph 94. I am not trying to
9 limit you but to sort of give you a
10 general location in your report.

11 A. What page? I am sorry.

12 Q. Paragraph 94, page 73.

13 MR. CRAMER: And Section C
14 starts with page 69, the section
15 where you discussed wage shares.

16 MR. ISAACSON: I am sure you
17 have to go before and after where
18 I pointed you to.

19 THE WITNESS: I think that I
20 would start with the Scully
21 article. I plan to march through
22 these one by one, if that's okay
23 with you.
24

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1 BY MR. ISAACSON:

2 Q. If you would just list them.

3 A. Sure. So the Scully article
4 from '74 uses labor share as the
5 dependent variable in the context of an
6 analysis of the impact of monopsony on
7 labor share and the relaxation of certain
8 restrictions, similar to the restrictions
9 that are being challenged here.

10 In footnote 340, I list
11 articles that themselves refer back to
12 Scully's approach to estimating the
13 impact of various changes in labor
14 restrictions in professional sports that
15 also -- let me finish, please -- that
16 also study the impact using the same lens
17 that I did, which is that of labor share.

18 Q. All right. My question is
19 only who ran regressions with the labor
20 share as a dependant variable?

21 A. I would -- I would want to
22 confirm each of those. Sitting here, I
23 can't tell you that, in fact, they ran
24 regressions. Sometimes the analysis is

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1 to look at changes in labor share before
2 and after a change was made to the
3 restrictions in a sport. And I just --
4 sitting here, I can't be certain that
5 each one of them used regressions. I can
6 be certain that the dependent variable or
7 the variable of interest was labor share.

8 I would put Scully's article
9 from 2004 into this category.

10 Q. And when you say you would
11 put it in this category, are you saying
12 Scully in 2004 ran a regression with
13 labor shares of the dependent variable?

14 A. I believe so. I know
15 that -- I know that the article uses
16 labor share as the lens with which to
17 view the impact of a change in a labor
18 market restriction in the sport, and I
19 know that there is econometrics in the
20 article. I can remember, for example,
21 Scully estimating marginal revenue
22 products using econometric models. I
23 will leave it at that.

24 Q. Please -- so far, you have

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1 cited Scully '74 and 2004.

2 A. Oh, and then I cited -- in
3 footnote 340, the way that we found these
4 articles was by -- was by looking back to
5 citations to Scully where the authors
6 invoked the same lens of analysis to
7 study the impact of a -- of a change,
8 typically in a restriction, but generally
9 of labor mobility on compensation in the
10 sport among athletes.

11 Q. I think you said, sitting
12 here today, you don't know whether any of
13 the citations in footnote 340 ran a
14 regression with labor share as a
15 dependent variable?

16 A. That's correct.

17 Q. Okay. So please continue
18 with answering my question about any
19 other things you have cited where a
20 regression was run with labor share as a
21 dependent variable.

22 A. Okay. Again, I am going to
23 put Kahn in the same category. This is
24 the cite on 346 and 347. I think I had

Page 486

1 earlier cited to Kahn, but Kahn is using
2 labor share as the lens of analysis to
3 study a change to labor rules governing
4 baseball, and sitting here, I am
5 hard-pressed to tell you that he used a
6 regression, which is I think the heart of
7 the question, to control for other
8 factors that may have changed around the
9 same time.

10 But whether or not he did, I
11 think the bone of contention between me
12 and your economist was whether -- was
13 whether labor share was the appropriate
14 lens with which to study the change in a
15 labor restriction on player compensation.

16 Q. My actual question is not --

17 MR. ISAACSON: And I move to
18 strike the answer.

19 BY MR. ISAACSON:

20 Q. -- is not -- what's your
21 response to the bones of contention
22 between the economist in this case? I
23 just want you to list articles with
24 regression analyses where the dependent

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1 variable was labor share.

2 A. Okay.

3 MR. CRAMER: And Dr. Singer
4 is doing that, but he is providing
5 some context as he is discussing
6 these reports and articles.

7 MR. ISAACSON: I disagree
8 with that. I move to strike the
9 last answer.

10 BY MR. ISAACSON:

11 Q. So please --

12 MR. CRAMER: We oppose.

13 BY MR. ISAACSON:

14 Q. -- just list articles that
15 you believe have regression analyses with
16 labor share as the -- as the dependent
17 variable.

18 And so far, you believe that
19 includes the Scully article in 1974, you
20 believe it may include the Scully article
21 in 2004.

22 A. Correct.

23 Q. So please tell me any
24 others.

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1 A. Well, I'm going to -- I am
2 amending that again because I think that
3 footnote that I pointed you to of all
4 the -- of all the articles that were
5 spawned by Scully's approach, which was
6 to use labor share as the lens of
7 analysis, could have, and indeed most
8 likely, did use regression analysis given
9 that that is the primary tool in the tool
10 kit of an economist.

11 But the reason I am
12 hesitating, as I sit here and I look at
13 the passages that I have cited, is that a
14 lot of the analysis is occurring through
15 a method that we refer to as the
16 before/after approach where it's
17 effectively getting at what a regression
18 would do but it's not controlling for all
19 the other things that could influence
20 labor share.

21 And so the fact that an
22 author used a before/after analysis to
23 compute the effect of a change in labor
24 restriction of a wage share, to me, is a

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1 distinction without -- a difference
2 without a distinction.

3 MR. ISAACSON: I will move
4 to strike as nonresponsive.
5 BY MR. ISAACSON:

6 Q. I just -- I understand you
7 don't accept the premise of the question.
8 I just want you to answer the question
9 and tell me articles that you do know,
10 not that could but articles you do know,
11 used a regression analysis with labor
12 share as the dependent variable to
13 measure the effect of monopsony.

14 MR. CRAMER: Dr. Singer is
15 doing that, but he is allowed to
16 provide context to his answers.

17 MR. ISAACSON: He's not
18 allowed to make speeches beyond
19 the question.

20 But please go on.

21 MR. CRAMER: I disagree that
22 he is not allowed to provide
23 context.

24 THE WITNESS: The Autor

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1 paper that Dr. Oyer originally
2 cited to use as labor share as the
3 dependent variable in econometric
4 analysis.

5 But I wanted to be thorough
6 and march one by one through the
7 citations that I made. So I would
8 like to -- I would like to keep
9 going.

10 BY MR. ISAACSON:

11 Q. Yes, please so. Why don't
12 you do that.

13 A. I am going to say the same
14 thing with respect to the Vrooman article
15 in 34 -- cited in footnote 348. This
16 time in the context --

17 Q. When you say I want to say
18 the same thing, are you saying that there
19 was a regression with a dependent
20 variable using labor share?

21 A. My belief is there was. I
22 don't cite that part of the article. I
23 am citing -- I am citing the text that I
24 think reveals the author's use of this

Page 495

1 cited in your report used a regression
2 analysis with labor shares as a dependent
3 variable with the exception of the Scully
4 articles and the, is it, Autor?

5 A. Autor, yes.

6 Q. Autor paper?

7 A. Oh, there could be more. I
8 mean, I would like to go through. But
9 just sitting here by memory, those two I
10 certainly recall reading econometric --
11 reading about econometric models.

12 Q. And I am --

13 A. And in others, I -- my only
14 memory is reading about when they would
15 try to look at what happened to labor
16 share before and after a rule change.

17 Q. Right.

18 A. And I just can't tell you,
19 sitting here -- because those are the
20 portions I cited, I can't tell you,
21 sitting here, that I recall with
22 certainty that they also used a
23 regression analysis. I think that I
24 would have to go back and open up the

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1 article to see.

2 Q. All right. And so I am not
3 trying to preclude you. I would like to
4 get an answer to my question about what
5 you recall today about regressions using
6 labor share as the dependent variable.
7 And you have named two -- you have named
8 two authors. You have said there may be
9 others, but you don't recall.

10 Would it assist you in
11 recalling any further to review the
12 citations in your report?

13 A. It could. It could but
14 my --

15 Q. Please complete your review.

16 A. Okay. Okay. I think that
17 what I was doing for each of these
18 citations was finding where the authors
19 described in words what the effect of a
20 rule change was of governing labor
21 restrictions on wage shares. That was --
22 that was the -- that was the motivation
23 behind the literature review.

24 Q. I would like you to be

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1 motivated by answering the question.

2 A. Fine.

3 Q. And not identifying these
4 other things.

5 So just focusing on
6 regression analyses with labor share as
7 the dependent variable, please finish
8 reviewing your citations and see if that
9 assists your memory in identifying any
10 that did that.

11 A. Okay. I am just going to
12 skip over Topel because my recollection
13 here actually is that he did not use
14 econometrics but, instead, used a
15 before/after method to study wage share.

16 Okay. So I am going to put
17 the article cited in 367 in the category
18 of using econometric models with labor
19 share as the dependent variable.

20 Q. All right.

21 A. 370 -- footnote 370 is the
22 Autor paper that I mentioned earlier.

23 Q. Thank you.

24 A. I repeat in footnote 379,

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1 the literature review that Autor gives
2 about the use of labor share as the
3 dependent variable, but, again, sitting
4 here, I can't tell you with certainty
5 that each of these used regression
6 analysis in their approach.

7 Q. Can you say that any of them
8 did?

9 A. Sitting here by memory, I
10 just -- I can't say one way or the other.

11 Three -- footnote 395, the
12 De Loecker piece from 2017 uses labor
13 share as the dependent variable and it
14 uses an econometric -- and in conjunction
15 with an econometric analysis.

16 I would put the 2013 paper
17 by Elsby, et al, cited in 396 in the
18 category of labor share as the variable
19 of interest and also using an econometric
20 model. So I think that takes me to the
21 end of the section.

22 Q. All right. So just to sum
23 it up, because we got a bit of narrative,
24 in terms of what you recall today, there

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1 may be others in your footnotes or text,
 2 but in terms of what you recall today,
 3 the published articles that you recall
 4 using regressions to measure a
 5 monopsonistic effect with labor share as
 6 the dependent variable are the two Scully
 7 articles, the Autor article cited in
 8 footnote 370, the article cited in
 9 footnote 367 by Dobbelaere and
 10 Mairesse -- I am probably mangling that
 11 name -- the De Loecker article at
 12 footnote 395, and the Elsby article at
 13 footnote 396.

14 MR. CRAMER: Did you leave
 15 out the Monks articles?

16 MR. ISAACSON: He did -- he
 17 did not put Monks in his
 18 regression.

19 THE WITNESS: I can't say
 20 with certainty that Monks did --
 21 used regression. But, of course,
 22 anything that's cited in the
 23 section could have used
 24 regression. I just -- sitting

Page 500

1 here, I can't say with certainty
 2 that it did.

3 BY MR. ISAACSON:

4 Q. All right. Now, are
 5 there -- can you identify any literature?
 6 Let's start with where econometric
 7 analysis was used to study the effect of
 8 monopsony power on labor that looked at
 9 labor -- at the labor share revenue but
 10 didn't look also at actual wages.

11 A. I don't think you can do one
 12 without the other. Even I, when I
 13 computed labor share, I had to have wages
 14 as my numerator.

15 Q. Okay. But in terms -- you
 16 don't use actual wages to determine
 17 whether there was a monopsony effect
 18 either for purposes of impact or damages;
 19 is that correct?

20 A. No, that's not correct. I
 21 used wages in the numerator.

22 Q. Right. You use it as an
 23 input, but you don't -- I am not going to
 24 say this correctly, but I think I have it

Page 501

1 in my head right.

2 You don't use econometric
 3 analysis showing the effect -- showing
 4 the effect on wages to determine whether
 5 there was a monopsonistic effect --

6 MR. CRAMER: Objection to
 7 form.

8 BY MR. ISAACSON:

9 Q. -- from the challenged
 10 conduct?

11 A. Not on wages in isolation,
 12 but wages as stated as a proportion of
 13 event revenues.

14 Q. Right, right.

15 A. Right.

16 Q. So are you aware of any
 17 articles, published articles, which used
 18 econometric analysis to determine the
 19 monopsonistic effect on labor share
 20 revenue that also didn't look at the
 21 effect on actual wages?

22 A. I think at the end of the
 23 day, once you have the effect on wage
 24 share, it's a ministerial calculation to

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1 look at the effect on wages, as I have
 2 done. So I don't think that any of the
 3 articles would have just stopped the
 4 analysis at wage share.

5 Q. Are there any
 6 before-and-after analyses that look at
 7 the before-and-after effect of
 8 monopsonistic conduct on the labor share
 9 revenue that also don't look at the
 10 before-and-after effect on actual wages?

11 MR. CRAMER: Form.

12 MR. ISAACSON: And I am
 13 referring to published articles.

14 THE WITNESS: Can I get that
 15 back?

16 - - -

17 (The reporter read from the
 18 record as requested.)

19 - - -

20 THE WITNESS: I think my
 21 answer is the same as the last
 22 question, which is once you have
 23 the effect on labor share, it's a
 24 trivial transformation to state

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1 pertained to Bellator, I think, and
 2 Bellator is inside of the tracked. And
 3 so it doesn't make sense to ask whether a
 4 fighter in this hypothetical market would
 5 substitute to Bellator. It's already in
 6 there. We are asking if you control all
 7 of those fighters, in addition to Zuffa's
 8 fighters, in addition to whoever else is
 9 inside of the tracked market, would that
 10 be enough to permit you to exercise
 11 monopsony power.

12 So I could help you along,
 13 but asking if they would substitute to
 14 Bellator isn't -- is nonsensical.

15 Q. Well, you agree with me that
 16 for the tracked market, Bellator,
 17 EliteXC, WEC and other promoters are
 18 participants in that market?

19 A. I don't like to put it that
 20 way, no.

21 Q. All right. Do you agree
 22 that they are customers for the fighters?

23 A. They are buyers in that --
 24 in that market, yes.

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1 Q. Okay. So in the tracked
 2 market, did you test whether fighters in
 3 that market would move to another buyer
 4 in that market such as Bellator if their
 5 individual pay declined other than
 6 looking at record evidence?

7 A. Again, no, and that's not
 8 the relevant experiment to perform.

9 Q. Okay. And in the tracked
 10 market, did you test whether fighters in
 11 that market would move to another buyer
 12 in that market such as World Series of
 13 Fighting if their individual pay declined
 14 other than looking at record evidence?

15 A. World Series of Fighting, I
 16 just can't recall if that's a promoter
 17 that was tracked by FightMetric. You
 18 might -- you might be able to help me
 19 out, and then I could give you an answer.

20 Q. World Series of Fighting is
 21 included in the -- is included in Fight
 22 Matrix in your tracked -- in your
 23 tracked --

24 A. Did you mean to say Fight --

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1 FightMetric?

2 Q. Ranked market.

3 A. Oh, ranked market.

4 Q. Yes.

5 A. So have you identified -- I
 6 think it would help me. You have
 7 identified a promoter now for the first
 8 time in the series of questions that sits
 9 outside of the tracked but inside of the
 10 ranked.

11 Q. Yes.

12 A. Got it.

13 Q. And maybe it will help if I
 14 repeat the question --

15 A. Okay.

16 Q. -- if anybody ever reads
 17 this.

18 A. Okay.

19 Q. The -- in the -- in the
 20 ranked market, did you test whether
 21 fighters in that market would move to
 22 another buyer in the market such as World
 23 Series of Fighting if their individual
 24 pay declined other than what you have

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1 said, you looked at revenue evidence?

2 A. I would say no. They are --
 3 they are already in the ranked market and
 4 so we are not looking at substitution
 5 within the ranked market. That's not the
 6 relevant inquiry.

7 Q. Okay. And -- all right.
 8 Now, for each of those markets, let's go
 9 to promoters that are outside the market.
 10 Okay.

11 So for the tracked market,
 12 did you look at -- did you test whether
 13 fighters in that -- let me start over.

14 In the tracked market, other
 15 than looking at record evidence, did you
 16 test whether fighters in that market
 17 would move to another buyer outside the
 18 market such as World Series of Fighting
 19 if their individual pay declined?

20 A. I think that it was largely
 21 informed through record evidence and
 22 through other inferences that I made,
 23 such as the profitability of Zuffa's
 24 weight suppression with a much smaller

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1 set of fighters. I think that there was
2 not a separate empirical analysis of
3 defection of fighters from -- the
4 promoters included -- in tracked, for
5 example, into the promoters included in
6 ranked but not in tracked.

7 Q. And your answer would be the
8 same for ranked that -- in terms of the
9 type of analysis you used?

10 A. Yes.

11 Q. And your answer would be the
12 same for the headliner submarket?

13 A. Correct.

14 MR. CRAMER: Whenever it's a
15 good time for a break, we have
16 been going for over an hour.

17 MR. ISAACSON: I think I may
18 be almost finished with something
19 here.

20 MR. CRAMER: Sure.

21 BY MR. ISAACSON:

22 Q. Did you consider any
23 narrower definitions to the market, by
24 which I mean did you consider a smaller

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1 market of buyers than your tracked
2 market?

3 A. Sure, the headliner market.
4 The headliner submarket, as I like to
5 call it.

6 Q. Was the headliner submarket
7 the smallest market you considered?

8 A. That is the smallest market
9 I considered.

10 MR. ISAACSON: All right.
11 Why don't we take a break.

12 THE VIDEOGRAPHER: The time
13 is 2:33 p.m. We are going off the
14 record.

15 - - -

16 (Off the record at this
17 time.)

18 - - -

19 THE VIDEOGRAPHER: The time
20 is 2:51 p.m. We are back on the
21 record. This is the start of
22 Disc 3.

23 BY MR. ISAACSON:

24 Q. Before the break, we were

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1 talking about the markets you defined.
2 With respect to the tracked market, did
3 you include all of the fighters that
4 fought for all of the buyers in that
5 market?

6 A. It's conceivable that there
7 are some fighters who were out listed in
8 FightMetric but are affiliated with a
9 promoters who is. It's conceivable. But
10 I think I am more comfortable saying that
11 we let the FightMetric data dictate who
12 was in the market. It's just whoever
13 they tracked.

14 Q. Okay. And the reason that
15 you didn't include all of the fighters
16 for all of the promoters in the tracked
17 market is because you let the FightMetric
18 data dictate who was in the market?

19 A. Not really. I think that we
20 are -- we are getting confused again
21 about -- about the market definition
22 exercise and the way that I measured and
23 identified fighters in the market.

24 I used various techniques,

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1 indirect and direct, of the SSNIP test to
2 try to inform the contours. And I got to
3 an MMA fighter relevant input market, and
4 then I went out and found two databases,
5 one by FightMetric, another by Fight
6 Matrix, that would allow me to inform or
7 populate who the fighters were in that
8 market after we have defined it using the
9 SSNIP test.

10 So I -- I am just hesitating
11 on the way that you put the question.
12 It's not as if the database dictated who
13 was in the market. We defined a market
14 as MMA -- professional MMA fighters, and
15 then we went out looking for databases
16 that would allow us to populate that
17 market with actual fighters.

18 Q. Did you use the SSNIP test
19 to populate who were the buyers in the
20 market you defined?

21 A. No.

22 Q. Why -- why didn't you
23 include all of the fighters who fought
24 for buyers in the tracked market in your

Page 543

1 A. Yes.

2 Q. Now, your output markets are
3 the live MMA events in which the
4 participating fighters are either in the
5 relevant input market or the relevant
6 input submarket?

7 A. Yes.

8 Q. Okay. And the consumers of
9 the output market include viewers, cable
10 networks, broadcast networks and
11 sponsors; is that fair?

12 A. Well, certainly, viewers and
13 consumers.

14 Can I hear -- can I hear --

15 Q. Viewers, cable networks,
16 broadcast networks, sponsors.

17 A. I feel more comfortable
18 saying that viewers are the -- are the
19 primary consumers in the output market,
20 not the -- not the cable distributors.
21 That's just an intermediary between the
22 viewer and the -- and the producer of the
23 event.

24 Q. So I am not -- I wasn't

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1 trying to assess anybody as primary or
2 secondary.

3 Rather, consumers -- do the
4 consumers in your output market include
5 viewers, cable networks, broadcast
6 networks and sponsors?

7 MR. CRAMER: Asked and
8 answered.

9 THE WITNESS: I don't recall
10 looking at substitution by
11 sponsors or substitution by cable
12 distributors. I think that the
13 right lens is that of the
14 consumer's perspective, ultimately
15 the viewer.

16 BY MR. ISAACSON:

17 Q. All right. Well, let me use
18 a -- maybe it's my word choice.

19 Are the customers in your
20 relevant output market viewers, cable
21 networks, broadcast networks and
22 sponsors?

23 MR. CRAMER: Objection to
24 form.

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1 THE WITNESS: And let's just
2 focus on cable networks. Are
3 you -- I took your first question
4 to mean cable distributors. Are
5 you -- are you intentionally
6 making a distinction between cable
7 networks and cable distributors
8 now?

9 BY MR. ISAACSON:

10 Q. No. I am not even sure what
11 you mean by a cable distributors.

12 A. Oh, a cable distributor
13 would be like Comcast, and a cable
14 network would be like a station or a
15 network that appears on the cable system.

16 Q. I mean -- well, let's --
17 let's do both.

18 A. Okay.

19 Q. So -- so Comcast is under
20 your definition a cable station?

21 A. No. Comcast is a
22 distributor.

23 Q. A distributor. Okay.

24 A. Comcast happens to be

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1 vertically integrated into certain
2 networks as well. But...

3 Q. All right. Okay. So are
4 the customers in your relevant output
5 market viewers, cable stations, cable
6 networks, broadcast networks and
7 sponsors?

8 MR. CRAMER: Form.

9 THE WITNESS: I think that
10 I -- the most natural customer to
11 think of in the output market,
12 which is the consumption of the
13 event, is the viewer. I think
14 that we could -- we could talk
15 about the way that sponsors -- the
16 role that sponsors play in this
17 market and the role that cable
18 networks play, but I -- they are
19 not -- they are not symmetrically
20 aligned with the viewers. And I
21 think that if -- I am trying to
22 recall the methods that I used to
23 define the contours, and I think
24 it was largely from the

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1 perspective of viewers.

2 BY MR. ISAACSON:

3 Q. So for your relevant output
4 market, are sponsors customers in that
5 market?

6 MR. CRAMER: Asked and
7 answered.

8 THE WITNESS: I just don't
9 like using -- I don't like using
10 the word "customer."

11 BY MR. ISAACSON:

12 Q. Okay. Are -- in your output
13 market, are sponsors buyers in that
14 market?

15 MR. CRAMER: Asked and
16 answered.

17 THE WITNESS: Sponsors are
18 buying advertising slots that are
19 associated with the event itself,
20 but I think the consumption of the
21 event is most properly understood
22 from the lens of the viewer, the
23 consumer.
24

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1 BY MR. ISAACSON:

2 Q. So does that mean sponsors
3 are not buyers in your relevant output
4 market?

5 MR. CRAMER: Asked and
6 answered.

7 THE WITNESS: They buy
8 advertising slots that are sold
9 alongside the event itself, but I
10 am -- I am considering the event
11 as the -- as what's being
12 produced.

13 BY MR. ISAACSON:

14 Q. Okay. In your relevant
15 output market, are broadcast networks --
16 I guess you don't like using the term
17 "customers" for broadcast networks; is
18 that --

19 A. They are certainly not
20 the -- not the ultimate customer. They
21 are an intermediary that gets them
22 between the ultimate customer and the
23 producer. And only for a small sliver of
24 events.

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1 I think the action, the
2 television action at least, is occurring
3 on the pay-per-view side, not on the
4 non-pay-per-view viewing side.

5 Q. As you define your relevant
6 output market, are broadcast networks
7 customers or buyers?

8 A. I think the broadcast
9 networks are buying the rights to
10 distribute the events to the ultimate
11 consumer, which is the viewer. So I
12 still like to think about the consumer or
13 the buyer in the output market, the
14 event, the production of the event as the
15 consumer, the viewer, ultimately.

16 Q. And so I just need to go
17 over this again because I understand you
18 think the consumer -- you think about the
19 consumer as the -- I guess as the -- as
20 the buyer ultimately, but I am trying to
21 figure out who you are excluding. I
22 understand you have got the consumers in
23 there.
24

Are broadcast networks

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1 customers or buyers in your -- in the
2 relevant output market you have defined?

3 MR. CRAMER: Asked and
4 answered.

5 THE WITNESS: I think they
6 are an intermediate -- an
7 intermediary that stands between
8 the customers and the producers of
9 the events, and only for a small
10 sliver of what I consider the
11 valuable television that's being
12 produced here.

13 BY MR. ISAACSON:

14 Q. So does that mean they are
15 or are not customers or buyers in your
16 relevant output market?

17 A. I think -- sorry.

18 MR. CRAMER: I was going to
19 say, same objection.

20 Go ahead. You may answer.

21 THE WITNESS: I would -- I
22 would say it depends on how you
23 want to -- what question are you
24 trying to answer?

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1 BY MR. ISAACSON:

2 Q. I am talking about the
3 questions you are answering that you are
4 defining in your market. I am talking
5 about your relevant output market.

6 A. Sure.

7 Q. Are the buyer -- are the
8 broadcast networks buyers or customers in
9 that market?

10 MR. CRAMER: Same objection.

11 THE WITNESS: I think
12 that -- I would have to go back to
13 my initial report, but if I am
14 remembering correctly, I was
15 looking at to where viewers would
16 go in response to a SSNIP in the
17 output market, not where cable
18 distributors would go, not where
19 cable networks would go. I was
20 looking at where viewers would go.
21 That's my memory, sitting here
22 today, as to -- as to how I
23 performed the SSNIP in the output
24 market.

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1 BY MR. ISAACSON:

2 Q. So at the -- by the end of
3 your reply report, you have not done a
4 SSNIP analysis for your output market for
5 sponsors; is that correct?

6 MR. CRAMER: Objection to
7 form.

8 THE WITNESS: I would have
9 to go back and look at my initial
10 report, but I -- my -- sitting
11 here, I don't -- I don't recall
12 doing that.

13 BY MR. ISAACSON:

14 Q. Okay. And at the end of
15 your reports, for your -- for the
16 relevant output market you have defined,
17 you haven't done a SSNIP analysis for
18 broadcast networks; is that correct?

19 A. I think the same answer.
20 It's possible I had record evidence that
21 spoke to the views of broadcasters, but
22 I -- sitting here, that's not what I
23 recall.

24 Q. Okay. For your relevant

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1 output market as you define it, you
2 didn't do a SSNIP analysis for cable
3 stations or cable networks?

4 A. I don't recall doing a
5 SSNIP, but I would have to go back and
6 refer to my -- from that perspective, but
7 I would have to go back and refer to my
8 initial report.

9 Q. Okay. And do you -- are you
10 able to say today whether cable stations
11 or cable networks are customers in the
12 relevant output market that you defined?

13 A. I think that with the caveat
14 that we are studying the non-pay-per-view
15 events, which, of course, are not the
16 important or salient or marketable or
17 valuable component of the content that's
18 being created, I think that you could say
19 that the cable networks can serve as a
20 proxy for the preferences of the ultimate
21 consumers, but I think that I conducted
22 my relevant output market analysis from
23 the perspective of the ultimate consumers
24 or customers, namely, the viewers.

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1 Q. Are the consumers the only
2 relative -- relevant customers in the
3 output market you have defined?

4 A. Can I have it back?

5 - - -

6 (The reporter read from the
7 record as requested.)

8 - - -

9 BY MR. ISAACSON:

10 Q. And by "consumers," I mean
11 individuals who attend or watch events,
12 such as myself.

13 A. I am going to have it back.
14 I am sorry.

15 Q. Sure. I don't blame you.

16 - - -

17 (The reporter read from the
18 record as requested.)

19 - - -

20 BY MR. ISAACSON:

21 Q. And by "consumers," I mean
22 individuals who attend events or watch
23 them.

24 A. I don't know what it means